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DUKE

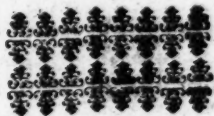
OF

Buckingham's

SPEECH

In a late

CONFERENCE



LONDON,

Printed for M. I. 1668.

THE

DUKE

OF

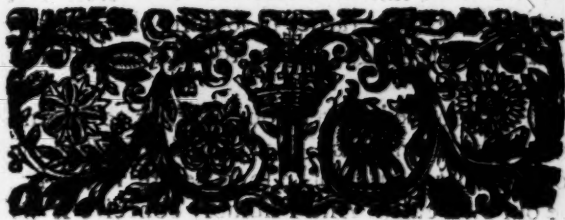
Buckingham

STATION

in stone

by J. H. H. H.

1888



The DUKE of
BUCKINGHAM'S
SPEECH

Gentlemen of the House of Commons.



Am Commanded by the House of Peeres,
 to open to You the Matter of this
 Conference; Which is a Taske I could
 with their Lordships had been pleased to
 lay upon any Body else, both for their
 own sakes and mine: having observed,
 in that little experience I have made in the World,
 there can be nothing of greater difficulty, Then to
 Unite Men in their Opinions, whose Interests seeme
 to disagree.

This, *Gentlemen*, I fear is at present our Case; but
 yet I hope, when we have a little better considered

of it, we shall finde, that a greater Interest does oblige us at this time, rather to joyn in the Preservation of both our Priviledges, then to differ about the violation of either.

We acknowledge it is our Interest to defend the Right of the Commons; for, should we suffer them to be oppress'd, it would not be long before it might come to be our own case. And I humbly conceive it will also appear to be the Interest of the Commons, to uphold the Priviledge of the Lords; that so we may be in a Condition to stand by and support them.

All that their Lordships desire of you upon this occasion, is, That you will proceed with them as usually Friends do, when they are in Dispute one with another; That you will not be impatient of hearing Arguments urg'd against your Opinions, but Examine the Weight of what is said, and then impartially consider which of us two, are likeliest to be in the wrong.

If we are in the wrong, we and our Predecessors have been so for these many hundred of years: and not only our Predecessors, but yours too; This being the first time that ever an Appeal was made, in point of Judicature, from the Lords House to the House of Commons. Nay, those very Commons which turn'd the Lords out of this House, though they took from them many other of their Priviledges, yet left them the constant practise of this till the very last day of their Sitting. And this will be made appear by several Presidents these Noble Lords will lay before you, much better then I can pretend to doe.

Since this business has been in Agitation, their Lordships have been a little more curious than ordinary, to Inform themselves of the true nature of these Matters now in Question before Us; which I shall endeavour

vour to Explain to you, as far as my small Ability, and my averſion to hard words will give me leave. For howſoever the Law, to make it a Myſtery and a Trade, may be wrapt up in Termes of Art, yet it is founded in reaſon, and is obvious to Common Senſe.

The power of Judicature does naturally deſcend, and not aſcend; That is no inferiour Court can have any power, which is not derived to it from ſome power above it.

The King is by the Lawes of this Land, Supreme Judge, in all Cauſes Eccleſiaſtical and Civil. And ſo there is no Court, High or Low, can Act, but in ſubordination to Him: and though they do not all Iſſue out their writs in the Kings Name, yet they can Iſſue out none but by vertue of ſome Power they have received from him.

Now every particular Court has ſuch particular power as the King has given it and for that reaſon has its bounds: But, the Higheſt Court in which the King can poſſibly Sit, that is, His Supreme Court of Lords in Parliament, has in it all his Judicial Power, and conſequently no bounds: I mean no bounds of Jurisdiction; for the higheſt Court is to Govern according to the Lawes, as well as the Loweſt.

I ſuppoſe none will make a queſtion, but that every Man, and every Cauſe, is to be tried according to *Magna Charta*; That is, by Peers, or according to the Laws of the Land. And he that is Tryed by the Eccleſiaſtical Courts, the Court of Admiralty, or the High Court of Lords in Parliament, is Tryed as much by the Lawes of the Land, as he that is Tryed by the Kings Bench, or Common-Pleas.

When theſe Inferior Courts happen to wrangle among themſelves, which they muſt often do, by reaſon of their

their being bound up to particular Causes, and their having all equally and earnestly a desire to try all Causes themselves, then the Supreme Court is forced to hear their Complaints, because there is no other way of deciding them. And this under favour, is an Original Cause of Courts, though not of men.

Now these Original Causes of Courts, must also of necessity induce Men, for saving of Charges, and dispatch sake, to bring their Causes Originally before the Supreme Court. But then the Court is not obliged to receive them; but proceeds by Rules of Prudence, in either retaining, or dismissing them as they think fit.

This is under favour, the summ of all that your Precedents can shew us; which is nothing but what we practice every day: That is, that very often, because we would not be molested with hearing too many particular Causes, we referr them back to other Courts. And all the Argument you can possibly draw from hence, will not in any kind lessen our Power, but only shew an unwillingness we have, to trouble our selves often with matters of this Nature.

Nor will this appear strange, if you consider the constitution of our House; it being made up, partly of such whose Employments will not give them leisure to attend the hearing of Private Causes; and entirely of those that can receive no profit by it,

And the truth is, the Dispute at present is not between the House of Lords, and the House of Commons, but between us and Westminster-Hall. For as we desire to have few or no Causes brought before us, because we get nothing by them; so they desire to have all Causes brought before them, for a reason a little of the contrary nature.

For this very reason, it is their business to invent new wayes of drawing Causes to their Courts, which ought not to be pleaded there. As for example, this very Cause of *Skinner* that is now before us, (And I do not speak this by Roate, for I have the opinion of a Reverend Judge in the Case, who informed us of it the other day in the House.) They have no way of bringing this Cause into Westminster-Hall, but by this form; the reason and sence of which I leave to you to Judge of.

The Form is this, that in stead of speaking as we ordinary Men do, that have no Art, That Mr. *Skinner* lost a Ship in the *East Indies*: to bring this into their Courts, they must say, That Mr. *Skinner* lost a Ship in the *East-Indies*, in the Parish of *Islington*, in the County of *Middlesex*.

Now some of us Lords, that did not understand the refineness of this stile, began to examine what the reason of this should be; and so we found, that since they ought not by right to try such Causes, they are resolved to make bold not only with our Priviledges, but the very Sence and Language of the whole Nation.

This I thought fit to mention, only to let you see, that this whole Cause, as well as many others, could not be tryed properly in any place but at our Barr; Except Mr. *Skinner* would have taken a fancy, to try the Right of Jurisdictions between Westminster-Hall and the Court of Admirallity, instead of seeking Relief for the Injuries he had received in the place only where it was to be given him.

One thing I hear is much insisted upon, which is, the Tryal without Juries; to which I could Answer, That such Tryals are allowed of, in the Chancery and other Courts: And, that when there is occasion for them, we
make

make use of Juries too, both by directing them in the Kings-Bench, and having them brought up to our Barr.

But I shall onely crave leave to put you in minde, That if you do not allow us in some Cases, to try Men without Juries, you will then absolutely take away the use of Impeachments; which I humbly conceive you will not think proper to have done at this time.

F I N I S.
